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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 SCOTT ALLEN FISCHER,

9 Petitioner,

10 v.

11 STATE OF WASHINGTON,

12 Respondent.

C20-51 TSZ

ORDER

13 THIS MATTER comes before the Court on the Report and Recommendation  
14 (“R&R”) of the Honorable Michelle L. Peterson, United States Magistrate Judge, docket  
15 no. 4. Having reviewed the R&R, to which no objection was filed, and the petition for a  
16 writ of habeas corpus brought pursuant to 28 U.S.C. § 2254, docket no. 3, the Court  
17 enters the following order.

18 **Discussion**

19 In connection with the death of Tina Wallace in November 2000, petitioner Scott  
20 Allen Fischer was convicted of first degree murder with aggravating factors and was  
21 sentenced to imprisonment for life without the possibility of parole. *See State v. Fischer*,  
22 2004 WL 1658979 (Wash. Ct. App. July 26, 2004). The Washington Court of Appeals  
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1 affirmed Fischer’s conviction and sentence. Id. In the check-box form of habeas petition  
2 filed by Fischer, in response to the question of whether he sought “further review by a  
3 higher state court,” i.e., the Washington Supreme Court, Fischer entered an “X” in the  
4 “No” box. See Pet. at 3 (docket no. 3). The R&R relies on this answer to conclude that  
5 Fischer failed to exhaust “the remedies available in the courts of the State,” see 28 U.S.C.  
6 § 2254(b)(1)(A), and to recommend that the habeas petition be dismissed **without**  
7 prejudice. Fischer, however, was mistaken, and he did, in fact, unsuccessfully petition to  
8 the Washington Supreme Court for discretionary review. See State v. Fischer, 154  
9 Wn.2d 1006, 113 P.3d 482 (2005). Moreover, Fischer presented two different personal  
10 restraint petitions to the Washington Court of Appeals, and certificates of finality issued  
11 on March 9, 2007, and April 21, 2017, respectively. See State v. Fischer, Nos. 58499-5-I  
12 & 75249-9-I (dockets available at <https://dw.courts.wa.gov>). Thus, the Court does not  
13 agree with the R&R that Fischer failed to exhaust his state court remedies.

14 In a footnote, the R&R notes that Fischer’s habeas petition is likely barred by the  
15 one-year period of limitations set forth in 28 U.S.C. § 2244(d)(1). See R&R at 3 n.3  
16 (docket no. 4). This footnote put Fischer on notice concerning the untimeliness of his  
17 habeas petition, and Fischer has provided no argument in response. The Court concludes  
18 that, prior to Fischer’s filing of the habeas petition on January 13, 2020, more than one  
19 year had elapsed since the date (April 21, 2017, at the latest) on which the judgment at  
20 issue became final by conclusion of direct, and all post-conviction or collateral, review.  
21 See 28 U.S.C. §§ 2244(d)(1)(A) & (2). Fischer has not described any “impediment” to  
22 the filing of his habeas petition, any new United States Supreme Court precedent under  
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1 which he seeks habeas relief, or any newly discovered factual predicate that might have  
2 triggered the limitation period during the year before he filed his habeas petition, *i.e.*, on  
3 or after January 13, 2019. *See id.* at §§ 2244(d)(1)(B)-(D); *see also* Pet. at ¶ 18 (docket  
4 no. 3). As a result, Fischer's habeas petition must be dismissed **with** prejudice.

5 **Conclusion**

6 For the foregoing reasons, the Court ORDERS:

7 (1) The R&R, docket no. 4, is MODIFIED in part and ADOPTED in part;

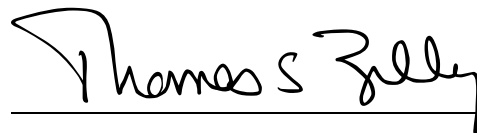
8 (2) The habeas petition, docket no. 3, is DISMISSED with prejudice as barred  
9 by the one-year limitation period set forth in 28 U.S.C. § 2244(d)(1);

10 (3) A certificate of appealability is DENIED based on the analysis articulated  
11 in the R&R; and

12 (4) The Clerk is DIRECTED to enter judgment consistent with this Order and  
13 to send a copy of the Judgment and this Order to petitioner pro se and to Magistrate  
14 Judge Peterson.

15 IT IS SO ORDERED.

16 Dated this 26th day of February, 2020.

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19 Thomas S. Zilly  
20 United States District Judge  
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